

Internal Revenue Service, Treasury

§ 301.9000-6

at law by a party against the United States. Nothing in these regulations creates a separate privilege or basis to withhold IRS records or information.

[T.D. 9178, 70 FR 7397, Feb. 14, 2005]

§ 301.9000-5 Written statement required for requests or demands in non-IRS matters.

(a) *Written statement.* A request or demand for IRS records or information for use in a non-IRS matter shall be accompanied by a written statement made by or on behalf of the party seeking the testimony or disclosure of IRS records or information, setting forth—

(1) A brief description of the parties to and subject matter of the proceeding and the issues;

(2) A summary of the testimony, IRS records or information sought, the relevance to the proceeding, and the estimated volume of IRS records involved;

(3) The time that will be required to present the testimony (on both direct and cross examination);

(4) Whether any of the IRS records or information is a return or is return information (as defined in section 6103(b) of the Internal Revenue Code (Code)), or tax convention information (as defined in section 6105(c)(1) of the Code), and the statutory authority for the disclosure of the return or return information (and, if no consent to disclose pursuant to section 6103(c) of the Code accompanies the request or demand, the reason consent is not necessary);

(5) Whether a declaration of an IRS officer, employee or contractor under penalties of perjury pursuant to 28 U.S.C. 1746 would suffice in lieu of deposition or trial testimony;

(6) Whether deposition or trial testimony is necessary in a situation in which IRS records may be authenticated without testimony under applicable rules of evidence and procedure;

(7) Whether IRS records or information are available from other sources; and

(8) A statement that the request or demand allows a reasonable time (generally at least fifteen business days) for compliance.

(b) *Permissible waiver of statement.* The requirement of a written statement in paragraph (a) of this section may be

waived by the authorizing official for good cause.

[T.D. 9178, 70 FR 7397, Feb. 14, 2005]

§ 301.9000-6 Examples.

The following examples illustrate the provisions of §§ 301.9000-1 through 301.9000-5:

Example 1. A taxpayer sues a practitioner in state court for malpractice in connection with the practitioner's preparation of a Federal income tax return. The taxpayer subpoenas an IRS employee to testify concerning the IRS employee's examination of the taxpayer's Federal income tax return. The taxpayer provides the statement required by § 301.9000-5. This is a non-IRS matter. A testimony authorization would be required for the IRS employee to testify. (In addition, the taxpayer would be required to execute an appropriate consent under section 6103(c) of the Code). The IRS would oppose the IRS employee's appearance in this case because the IRS is a disinterested party with respect to the dispute and would consider the commitment of resources to comply with the subpoena inappropriate.

Example 2. In a state judicial proceeding concerning child support, the child's custodial parent subpoenas for a deposition an IRS agent who is examining certain post-divorce Federal income tax returns of the non-custodial parent. This is a non-IRS matter. The custodial parent submits with the subpoena the statement required by § 301.9000-5 stating as the reason for the lack of taxpayer consent to disclosure that the non-custodial parent has refused to provide the consent (both a consent from the taxpayer complying with section 6103(c) and a testimony authorization would be required prior to the IRS agent testifying at the deposition). If taxpayer consent is obtained, the IRS may provide a declaration or certified return information of the taxpayer. A deposition would be unnecessary under the circumstances.

Example 3. The chairperson of a congressional committee requests the appearance of an IRS employee before the committee and committee staff to submit to questioning by committee staff concerning the procedures for processing Federal employment tax returns. This is an IRS congressional matter. Even though questioning would not involve the disclosure of returns or return information, the questioning would involve the disclosure of IRS records or information; therefore, a testimony authorization would be required. The IRS employee must contact the IRS Office of Legislative Affairs for instructions before appearing.

Example 4. The IRS opens a criminal investigation as to the tax liabilities of a taxpayer. This is an IRS matter. During the criminal investigation, the IRS refers the